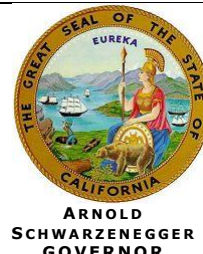




# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT



For Meeting Date: August 6, 2009

**Agenda Item No. 1: Public Hearing: Request for Determination for Vested Rights, Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), Yuba County.**

**INTRODUCTION:** In 2003, the State Mining and Geology Board (SMGB) assumed from the County of Yuba, certain lead agency obligations and responsibilities pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA). Western Aggregates, LLC (Western) maintains a surface aggregate mining operation in the Yuba Goldfields, within the County of Yuba. As a result of a ruling issued in December 2006, and modified in January 2007, by the California Court of Appeal, Third Appellate District, Western decided to prove its claim of a vested right to mine aggregate in a public adjudicatory hearing before the SMGB. The SMGB is holding this public hearing to hear testimony and discussion prior to making a determination of Western's claim to a vested right to mine aggregate within 4,125 acres dispersed throughout 14 Sections within the Yuba Goldfields.

**REGULATORY AND STATUTORY AUTHORITY AND CONSIDERATIONS:** SMARA requires all individuals and operators to acquire a permit from the local lead agency, and to obtain a SMARA lead agency approved reclamation plan and financial assurances for reclamation, prior to the commencement of surface mining operations (Public Resources Code (PRC) Section 2770(a)). However, any person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall not be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter (PRC Section 2770(b)).

PRC Section 2776 further states:

*"No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation*



Executive Officer's Report

*or the issuance of a permit shall not be deemed liabilities for work or materials.”*

SMGB regulations define a vested right and provides criteria for which a vested right is determined. California Code of Regulations (CCR) Section 3951 defines a vested right as follows:

*“A vested right is the right to conduct a legal nonconforming use of real property if that right existed lawfully before a zoning or other land use restriction became effective and the use is not in conformity with that restriction when it continues thereafter. A vested mining right, in the surface mining context, may include but shall not be limited to: the area of mine operations, the depth of mine operations, the nature of mining activity, the nature of material extracted, and the quantity of material available for extraction.*

*A person shall be deemed to have a vested right or rights to conduct surface mining operations if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials. Expansion of surface mining operations after January 1, 1976 may be recognized as a vested nonconforming use under the doctrine of ‘diminishing asset’s as set forth in Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533.”*

The relevant criteria or evidence for determination of a claim of vested rights is discussed in CCR Section 3963, which states:

*“Relevant evidence in a proceeding for determination of a claim of vested rights shall be written or oral evidentiary statements or material demonstrating or delimiting the existence, nature and scope of the claimed vested right[s]. Such evidence shall include, but is not limited to, evidence of any permit or authorization to conduct mining operation on the property in question prior to January 1, 1976, evidence of mining activity commenced or pursued pursuant to such permit or authorization, and evidence of any zoning or land use restrictions applicable to the property in question prior to January 1, 1976.*



*As to any land for which Claimant asserts a vested right for expansion of operations, Claimant shall produce evidence demonstrating that the Claimant clearly intended to expand into such areas. Such evidence shall be measured by objective manifestations, and not subjective intent at the time of passage of the law, or laws, affecting Claimant's right to continue surface mining operations without a permit."*

In other words, the four criteria or relevant evidence, are:

1. Evidence of any permit or authorization to conduct mining operations on the property in question prior to January 1, 1976;
2. Evidence of mining activity commenced or pursued pursuant to such permit or authorization;
3. Evidence of any zoning or land use restrictions applicable to the property in question prior to January 1, 1976; and
4. For any land for which Claimant asserts a vested right for expansion of operations, Claimant shall produce evidence demonstrating that the Claimant clearly intended to expand into such areas. Such evidence shall be measured by objective manifestations, and not subjective intent at the time of passage of the law, or laws, affecting Claimant's right to continue surface mining operations without a permit.

CCR Section 3964 provides the burden of proof to be considered in making a determination of vested rights and states:

*"Following the public hearing, the Board, if the Board conducted the hearing, or its committee, administrative hearing officer, or special master shall determine whether the Claimant, by a preponderance of the evidence, has demonstrated a claim for vested rights pursuant to Public Resources Code Section 2776."*

**BACKGROUND:** In a January 2007 ruling, the California Court of Appeal, Third Appellate District, held that a proper public notice and hearing was required for any vested rights determination, and in the matter of Western stated that the County failed to provide a proper notice and hearing in its consideration of vested rights for this surface mining operation. The court ruling provided two options for Western's consideration should Western want to continue its aggregate mining in the Yuba Goldfields: either 1) prove its claim of vested

rights in a public adjudicatory hearing before the SMGB (to be conducted within the County's area of jurisdiction), or 2) obtain a permit to conduct such surface mining based on a public adjudicatory hearing before the County.

The SMGB has assumed certain obligations and responsibilities of a SMARA lead agency in the implementation of SMARA in the County of Yuba. These responsibilities include approval of reclamation plans and financial assurances, conduct of site inspections, and determination of vested rights when petitioned by a claimant (operator) and such petition is determined to be within the jurisdiction of the SMGB. The SMGB recognized its authority to conduct a vested rights determination at its regular business meeting held on February 8, 2007, and adopted Resolution 2007-04 which defined the SMGB's authority as a SMARA lead agency to conduct a vested rights determination.

Between March 8, 2007, and September 14, 2007, the SMGB conducted several public hearings to hear preliminary concerns and comments from various stakeholders. These preliminary concerns and comments were reviewed by the SMGB and were publicly discussed at the SMGB's Policy and Legislation Committee meetings held on March 8, April 12, May 10, June 14 and September 7, 2007, and by the whole SMGB during its regular business meeting held on September 13, 2007. The SMGB adopted the new regulations at its regular business meeting held on February 14, 2008. On August 14, 2008, the Office of Administrative Law approved the proposed regulations, and such regulations were enacted on September 13, 2008.

Western filed a vested right Request for Determination on November 5, 2008. A chronology of pertinent administrative procedural actions since receipt of Western's Request for Determination is summarized in Table 1:

<b>TABLE 1</b> <b>Chronology of Pertinent Administrative Procedural Actions</b> <b>Western Aggregates, LLC.</b> <b>Request for Vested Rights Determination</b>	
<b>Administrative Action</b>	<b>Date Exercised</b>
Receipt of Request for Determination with Administrative Record	November 5, 2008
Determination of Jurisdiction	November 19, 2008
Mailing of Determination of Jurisdiction	December 1, 2008
Mailing of Notice of Pending Vested Rights Determination	January 6, 2009; amended January 12, 2009
Estimated Cost for Determination of Findings Provided to Claimant	January 27, 2009
Determination of Hearing Officer	February 5, 2009
Commencement of Review of Administrative Record by CGS	March 3, 2009
Determination of Schedule	April 9, 2009
Provision of Further Public Notice	May 8, 2009
Submission of Written Comments and Materials	June 1, 2009
Submission of Rebuttal Materials	June 23, 2009
Commencement of Public Hearing	August 6 and 7, 2009
Adoption of Determination	Within 60 business days after completion of hearing

The administrative record received on November 5, 2008, is comprised of three volumes (Volumes I, II and III-A, III-B and III-C), and 20 volumes of historical record containing over 12,000 pages. The Administrative Record was made accessible for review at:

The Yuba County Government Center  
915 8<sup>th</sup> Street, Suite 109  
Marysville, CA 95901

and,

State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, CA 95814

At its February 5, 2009, regular business meeting, the SMGB determined that the whole SMGB would act as the hearing officer during conduct of a public hearing for a vested right

determination. On April 9, 2009, the SMGB held a pre-hearing conference hearing to address scheduling of the public hearing, and scheduled the hearing to commence on August 6, 7 and 8, 2009. Due to budgetary restrictions governing overtime, extension of the public hearing to August 8 was subsequently cancelled.

The Comment period was closed on June 1, 2009. The claimant's Rebuttal period closed on June 23, 2009. Additional comment provided by the County was received on July 9, 2009. Documents received by the SMGB reflecting comments based on review of the Request for Determination, and rebuttals by the Claimant, are summarized in Table 2.

TABLE 2				
Index to Pertinent Documents				
Item No.	Commenter	Author	Description	Date
1.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Western Aggregates Request for Determination	October 2008; received November 5, 2008
2.0	SMGB Chairman	Allen M. Jones	Determination of Jurisdiction	November 19, 2009
3.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Yuba Goldfields: Preliminary Assertion of Title	May 14, 2009
4.0	Hammonton Farms, LLC	Dana M. Davis	Western Aggregates Vested Rights Hearing for Aggregate Mining	June 5, 2009
5.0	Taylor & Wiley	John Taylor	Submission on Behalf of A. Teichert & Sons, Inc. in Response to Western Aggregates' Request for Determination	June 5, 2009

Agenda Item No. 1 – Western Aggregates, LLC. Vested Rights Public Hearing  
 August 6, 2009  
 Page 7 of 23

6.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Western Aggregates LLC (CA Mine ID #91-58-0001) Request for Determination of Vested Rights	June 5, 2009
7.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Western Aggregates LLCs Request for Determination: Response to SMGB Questions Regarding Reclamation Plan RP 80-01 (Includes SMGB's " <i>Inquiry to Petition for Vested Rights Determination, Western Aggregates, LLC (CA Mine ID CA #91-58-0001), Yuba County,</i> " dated May 13, 2009)	June 9, 2009
8.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Western Aggregates LLC (CA Mine ID #91-58-001) Request for Determination of Vested Rights (Errata)	June 10, 2009
9.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Request for Determination of Vested Rights, Yuba County, California, Rebuttal to Public Comments	June 24, 2009
10.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro	Western Aggregates LLC: Errata to Rebuttal to Public Comments	June 29, 2009
11.0	California Geological Survey	State Geologist Dr. John Parrish	Review of Evidence, Western Aggregates LLC Vested Rights Determination	July 2009
12.0	County of Yuba	Mary Jane Griego, Supervisor, District Three	Correspondence to SMGB Chairman Garner	July 9, 2009
13.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Correspondence Re: Western Aggregates	July 13, 2009
14.0	Taylor & Wiley	John M. Taylor	Re: Western Aggregates Vested Rights Determination	July 21, 2009
15.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Supplemental Information Submitted in Response to the California Geological Survey's Review of Evidence Dated July 2009	July 23, 2009
16.0	Taylor & Wiley	John M. Taylor	Enclosure of "The Gold Dredge" Video	July 29, 2009

**ANALYSIS:** Documents reviewed and considered in analysis of Western's claim of vested rights for 4,125 acres located in the Yuba Goldfields are summarized in Table 2. The California Geological Survey's (CGS) review of the Request for Determination submitted by Western included:

- Review of approximately 13,000 pages of text and mining records, and 75 maps.
- Review of topographic maps and aerial photographs from 1973.
- Conduct of a one-day site visit to verify certain aspects of the evidence.
- Reorganization of data submitted by Western in order to present the evidence of facts in a format for the purpose of determination of findings as specified pursuant to SMARA and the SMGB's regulations.
- Summation of evidence provided by Western for mining activity within each of the 14 sections of land for which Western is seeking vested rights.
- Consideration of other factors pertinent to the SMGB in its consideration of vested rights, including criteria set forth in the SMGB's regulations and the *Hanson Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533 lawsuit.
- Summation of information for the SMGB's consideration as required in CCR Section 3964 of the SMGB's regulations.

In addition, all written comments received, and as summarized in Table 2, have been reviewed and considered, in preparation of the findings set forth herein.

**DISCUSSION:** In considering the evidence before the SMGB, and prior to the SMGB making its determination, the following discussion is made.

Preponderance of the Evidence: Western has the burden of proof in demonstrating its claim for vested rights. For most civil claims, there are two different evidentiary standards that a claimant must meet: preponderance of the evidence, and clear and convincing evidence. A third standard, proof beyond a reasonable doubt, is used in criminal cases and very few civil cases. The SMGB shall determine whether the Claimant, by a preponderance of the evidence, has demonstrated through testimony and exhibits, enough evidence to support the claim for vested rights. The amount of evidence required can vary from claim to claim, or in this case per Section. The amount of evidence that constitutes a preponderance cannot be reduced to a simple formula, and has been generally described as just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true. It is difficult to translate this definition and apply it to evidence in a case, but the definition serves as a helpful guide to judges and juries in determining whether a claimant has carried his or her burden of proof.

Objective manifestation: CCR Section 3963 states “As to any land for which Claimant asserts a vested right for expansion of operations, Claimant shall produce evidence demonstrating that the Claimant clearly intended to expand into such areas. Such evidence shall be measured by objective manifestations, and not subjective intent at the time of passage of the law, or laws, affecting Claimant’s right to continue surface mining operations without a permit.” In other words, there must be identifiable evidence or conditions that have a physical basis.

Mining Operation: PRC Section 2776 states that “A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor.” CCR Section 3951 further states “A vested mining right, in the surface mining context, may include but shall not be limited to: the area of mine operations, the depth of mine operations, the nature of mining activity, the nature of material extracted, and the quantity of material available for extraction.

PRC Sections 2729 and 2735 defines mined lands and surface mining operations. PRC Section 2729 defines mined lands to include “...the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.”

PRC Section 2735 defines surface mining operations to mean “...all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) Inplace distillation or retorting or leaching.
- (b) The production and disposal of mining waste.
- (c) Prospecting and exploratory activities.”

Thus, mining activities or operations in considering evidence may include presence of stockpiles, plant operations transportation features (i.e., haul roads, truck scales, conveyors, etc.) and business or administration structures (office and storage facilities). Production of mined materials, and equipment used for such activity can also be considered as evidence. Prospecting and exploratory activities may include, but not be

limited to, corings, trenchings, drill holes for cut samples, special reports about resources, surveys and blueprints for proposed expanded activities.

Depth of Mining: CGS in its review of the petitioner's submittal determined the deepest pre-1976 physical mining depth within Western's vested right area to be -80 feet relative to mean sea level (MSL); whereas, review of drill log data indicated aggregate deposits likely occur to a maximum depth of -123 feet relative to MSL. In determining the depth of Western's vested right, the SMGB will need to determine whether: 1) such depth is limited to technology available at the time (i.e., dredging with a depth capability or reach to about 130 feet below ground surface) which could be applied uniformly, or 2) the maximum depth of the aggregate resources based on drill hole data on a Section by Section basis.

Abandonment: In SMGB correspondence dated May 13, 2009, an inquiry was made based on review of the materials submitted by Western in support of its application for vested rights. The inquiry set forth in this correspondence was:

*"In light of the adoption of Reclamation Plan RP-80-01 in 1980, what evidence or argument exists to demonstrate an objective manifestation of intent to mine beyond the boundaries of RP-80-01 when that property was excluded from RP-80-01? Stated alternatively, why was the adoption of RP-80-01 not an abandonment of any vested rights outside of RP-80-01?"*

A response to this inquiry was provided by Western in correspondence dated June 9, 2009, Western claimed that it *"never intended to abandon any portion of its vested right, and indeed, sought repeatedly to mine as much of its property in the Goldfields as it could."* This statement was based on the following:

- Abandonment of a vested right required both clear intent and an overt act manifesting such intent.
- Absence of any historical evidence of any clear intent to abandon.
- Evidence that aggregate was being mined outside the Deep Reserve Area, and would continue to be an important land use without and within the Deep Reserve Area, as stated in RP-80-01.
- Between 1979 and 1987, Western's predecessor demonstrated clear intent to mine outside the boundaries of RP-80-01 by entering into multiple joint ventures and leases, and filing reclamation plans which covered lands outside of RP-80-01.

**FINDINGS:** Western is seeking confirmation of vested rights for surface mining of aggregates on 4,125 acres of land located in the Browns Valley and Smartsville USGS

7.5-minute topographic quadrangles within portions of 14 Sections. Based on review of CGS's findings, and other documents received (as summarized in Table 2 herein), the following findings are made:

Finding No. 1 – T15N R4E Section 1: Within Section 1, 819 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 270 drill holes, dredge cut mapping, and presence of tailings and haul roads. Twelve mining operations and one plant site were documented. The deepest drilling log was to a depth of 252 feet below ground level.

Finding No. 2 - T15N R4E Section 2: Within Section 2, 233 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 47 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Two mining operations were documented. The deepest drilling log was to a depth of 121 feet below ground level.

Finding No. 3 - T15N R4E Section 11: Within Section 11, 159 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 30 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Seven mining operations, three plant sites and one scale site were documented. The deepest drilling log was to a depth of 118 feet below ground level.

Finding No. 4 - T15N R4E Section 12: Within Section 12, 320 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 47 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Fourteen mining operations were documented. The deepest drilling log was to a depth of 111 feet below ground level.

Finding No. 5 - T15N R5E Section 4: Within Section 4, 860 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 59 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Four mining operations were documented. The deepest drilling log was to a depth of 41 feet below ground level.

Finding No. 6 - T15N R5E Section 5: Within Section 5, 750 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 59 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Two mining operations were documented. The deepest drilling log was to a depth of 121 feet below ground level.

Finding No. 7 - T15N R5E Section 6: Within Section 6, 535 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 138 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Eleven mining operations and one scale site were documented. The deepest drilling log was to a depth of 216 feet below ground level.

Finding No. 8 - T16N R5E Section 25: Within Section 25, 32 acres are under consideration. The sole evidence for mining included presence of haul roads. No other supportive evidence was found in the submittal.

Finding No. 9 - T16N R5E Section 26: Within Section 26, 74 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 5 drill holes, dredge cut mapping, and the presence of tailings and haul roads. One mining operation was documented. The deepest drilling log was to a depth of 86 feet below ground level.

Finding No. 10 - T16N R5E Section 27: Within Section 27, 8 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 7 drill holes, dredge cut mapping, and the presence of tailings and haul roads. The deepest drilling log was to a depth of 32 feet below ground level.

Finding No. 11 - T16N R6E Section 30: Within Section 30, 54 acres are under consideration. One mining operation was documented. No other supportive evidence was found in the submittal.

Finding No. 12 - T16N R5E Section 32: Within Section 32, 9 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included one drill hole, dredge cut mapping, and the presence of tailings and haul roads. The deepest drilling log was to a depth of 148 feet below ground level.

Finding No. 13 - T16N R5E Section 33: Within Section 33, 151 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 26 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Four mining operations were documented. The deepest drilling log was to a depth of 156 feet below ground level.

Finding No. 14 - T16N R5E Section 34: Within Section 34, 9 acres are under consideration, excluding the southwest quarter of the Section. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining

included 5 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Two mining operations were documented. The deepest drilling log was to a depth of 41 feet below ground level.

Finding No. 15 - T16N R5E Section 34: Within Section 34, 157 acres are under consideration. Evidence for mining included one suspect haul road. Two suspect mining operations that are likely located in Section 33 were documented. No other supportive evidence was found in the submittal.

In addition, pursuant to CCR Section 3963, part of the findings necessary for vesting is that the lands in question were authorized for mining prior to SMARA. CCR Section 3963 states “*Such evidence shall include, but is not limited to, evidence of any permit or authorization to conduct mining operation on the property in question prior to January 1, 1976, evidence of mining activity commenced or pursued pursuant to such permit or authorization, and evidence of any zoning or land use restrictions applicable to the property in question prior to January 1, 1976.*” Thus, the following findings are also provided.

Finding No. 16 – 1971 County Mining Ordinance: All the sections in question were included under the 1971 county mining ordinance 472.

Finding No. 17 – 1956 County Mining Ordinance: All sections in question were included under the 1956 county mining ordinance 205.

Finding No. 18 – Chain of Land Ownership: The chain of land ownership supports Western Aggregates’ claim of successor operator for mining activities.

Finding No. 19 – CGS’s Preliminary Summary of Findings: Find that CGS’s report preliminary summary of findings, Section 5.0 through 5.5 is supported by the evidence in the record.

**CONSIDERATION BEFORE THE SMGB:** The SMGB has three primary actions to consider.

Consideration No. 1: The SMGB must first consider acceptance of the findings set forth in the Executive Officer report herein (Motion No. 1). The SMGB can consider:

1. Acceptance of the findings as stated; or
2. Modifying the findings, and then accepting them.

Consideration No. 2: The second series of considerations the SMGB must undertake is determining whether the SMGB will recognize the vested rights claimed by Western. The materials the SMGB will base its determination on is divided by USGS Topographic Map Survey Section. The SMGB will make such determination on a Section by Section basis (Motion Nos. 2 through 16).

Pursuant to CCR Section 3964, following the public hearing, the SMGB shall determine whether the Claimant, by a preponderance of the evidence, has demonstrated a claim for vested rights pursuant to PRC Section 2776. The determination shall identify upon what specific property the vested rights are established and the scope and nature of surface mining operations included within the established vested right or rights. For each Section, the SMGB can consider:

1. Recognition that the Claimants Vested Rights to mine, without limitations are supported by persuasive preponderance of the evidence;
2. Recognition that the Claimants Vested Rights to mine, with specified limitations (to be listed) are supported by persuasive preponderance of the evidence; or
3. Determination that the vested rights claimed by the petitioner are not supported by a preponderance of the evidence.

The SMGB is required to make a determination no later than 60 business days after completion of the vested rights public hearing. Following adoption of the SMGB's final determination, notification will be made by certified mail to the party claiming vested rights and to the local agency originally holding SMARA lead agency status. Notification of the final determination of the SMGB shall also be made by regular mail to any person who

commented at, or participated in, the public hearing, any person who has requested such notice, and shall be immediately posted upon the SMGB's website.

Consideration No. 3: Should the SMGB recognize the claimant's vested rights, in whole or in part, then an amended reclamation plan must be prepared by the claimant that is reflective of the current surface mining operation in accordance with SMARA and the SMGB's regulations (Motion No. 17).

**SUGGESTED MOTION LANGUAGE:** The Executive Officer offers the following motion for the SMGB's consideration:

Motion No. 1 for the SMGB to accept findings:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board accept the findings developed by the California Geological Survey, and in consideration of written comments received, accept the nineteen findings set forth by the Executive Officer.*

Motion No. 2 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T15N R4E Section 1:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 819 acres within T15N R4E Section 1.*

Motion No. 3 for the SMGB to recognize, with or without limitations, or reject vested rights claim, for T15N R4E Section 2:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 233 acres within T15N R4E Section 2.*

Motion No. 4 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T15N R4E Section 11:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, or find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence for 159 acres within T15N R4E Section 11.*

Motion No. 5 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T15N R4E Section 12:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 320 acres within T15N R4E Section 12.*

Motion No. 6 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T15N R5E Section 4:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 860 acres within T15N R5E Section 4.*

Motion No. 7 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T15N R5E Section 5:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 750 acres within T15N R5E Section 5.*

Motion No. 8 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T15N R5E Section 6:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 535 acres within T15N R5E Section 6.*

Motion No. 9 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R5E Section 25:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 32 acres within T16N R5E Section 25.*

Motion No. 10 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R5E Section 26:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 74 acres within T16N R5E Section 26.*

Motion No. 11 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R5E Section 27:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 8 acres within T16N R5E Section 27.*

Motion No. 12 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R6E Section 30:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 54 acres within T16N R6E Section 30.*

Motion No. 13 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R5E Section 32:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 9 acres within T15N R5E Section 32.*

Motion No. 14 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R5E Section 33:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 151 acres within T16N R5E Section 33.*

Motion No. 15 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R5E Section 34, excluding the southwest quarter of the Section:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 9 acres within T16N R5E Section 34, excluding the southwest quarter of the Section.*

Motion No. 16 for the SMGB to recognize, with or without modification, or reject vested rights claim, for T16N R5E Section 34:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board [pick one] recognize the petitioner's claim of vested rights without limitations, [or] recognize the petitioner's claim of vested rights with the following specific limitations, [or] find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence, for 157 acres within T16N R5E Section 34.*

Motion No. 17. For the SMGB to request claimant to provide an adequate reclamation plan:

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board notify the claimant that it must provide an adequate, SMARA compliant amended reclamation plan for its current surface mining operations to the SMGB office within 90 days from today.*

Respectfully submitted:

---

Stephen M. Testa  
Executive Officer



**Proceedings for**  
**Request for Determination of Vested Rights**

**FOR:**

**Western Aggregates, LLC**  
**Western Aggregates, LLC (Claimant)**  
**Kerry Shapiro (Agent)**

The purpose of this Proceeding is to allow the Petitioner and the public to present arguments pertaining to the claimant's request for a vested rights determination for its operations and lands located in the Yuba Goldfields, within the County of Yuba. The Order of the Proceedings is set forth in the SMGB's regulations pursuant to CCR Section 3961.

Following the presentations, the SMGB will consider the issues before it and may ask questions of the participants.

**The Order of the Proceedings will be as follows:**

The public hearing will proceed in the following manner:

**DAY 1, Thursday, August 6, 2009**

1. Identification of the Record by the Executive Officer;
2. Statement on Behalf of CGS;
3. Statements on Behalf of Western Aggregates;
4. Statements on Behalf of Yuba County;
5. Statements on Behalf of the Public;

Please submit a "blue speakers card" if you wish to address the Board on this issue.

- Other parties of real interest.

6. Rebuttal on Behalf of Western Aggregates;

Note: (a) Notwithstanding the above, the Chairman of the Board or the delegated committee's selected chair, or the Board's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings, provide for additional testimony, or provide for additional rebuttal.

(b) The Chairman of the SMGB, or the SMGB's designee, may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted at least five business days prior to the hearing.

(c) All statements of fact made at the hearing shall be under oath as administered by the Chairman of the SMGB, or the SMGB's designee.

(d) The public hearing shall be recorded either electronically or by other convenient means.

**DAY 2 (If Necessary), Friday, August 7, 2009**

7. Deliberation of the SMGB;

8. Motion to close the public hearing.

